HO YEW CHENG v. REGINA

[C. C. A. (Rose C.J., Tan Ah Tah and Chua JJ.) November 8, 1962]

[Singapore — Criminal Appeal No. 9 of 1962]

Criminal Law and Procedure — Identification parade — Evidence of witness that she pointed out accused — Whether admissible — Criminal Procedure Code (Cap. 132), s.121(1).

The complainant was asleep when her bedroom was entered by three persons who wore masks, amongst whom was the appellant, who stood near her bed and threatened her with a dagger. Shortly thereafter the police arrived at the scene and after a chase managed to arrest the appellant who was later identified by a witness at an identification parade held by the police. The appellant was convicted under sections 392 and 397 of the Penal Code. On appeal, it was argued on behalf of the appellant that evidence of what had occurred at the identification parade held by the police was wrongly admitted.

Held: assuming that the evidence as to what had occurred at the identification parade was wrongly admitted, there was nevertheless enough evidence to justify the conviction of the appellant.

Per Curiam: "We see no reason to disagree with Mr. David Marshall's observation that, if the law is correctly stated in the Indian Supreme Court case (2), then the present position as to the evidence concerning what happens at an identification parade is anomalous to the point of absurdity. It surely cannot have been the intention of the legislature to exclude evidence of the fact that a witness at an identification parade signified his recognition of the person involved by a gesture such as pointing finger; or even by standing in front of the person involved and looking towards him. In the absence of any authoritative ruling of the Judicial Committee of the Privy Council, the present anomalous position, assuming the Indian judgment referred to to be correct, would seem to be a matter for correction by the legislature."

[**Editorial Note:** It is perhaps regrettable that the Court of Criminal Appeal of Singapore did not deem it fit to give an authoritative pronouncement on the legal effect of a gesture (constituting the physical fact of identification) at an identification parade held by the police. The Court of Appeal of the Federation of Malaya in *Meelamchan* v. *Public Prosecutor* (1) has categorised it as a statement made to a police officer in the course of a police investigation and therefore not admissible. This case is now invariably cited in the courts in Singapore whenever that point arises. Although its authority is only persuasive before a Singapore court we suggest that it should be followed on the basis that there should be a homogenous development of identical laws in related territories. It is undesirable that the admissibility of this type of identification evidence should depend on whether it is tendered on one side of the causeway or the other. Indeed learned counsel for the appellants made a forceful attempt to impress this point upon the Court of Criminal Appeal by the citation of the following authorities: (1) *Cording* v. *Halse* [1955] 1 Q.B. 63, 70, C.A.; (2) *Regional Properties Co. Ltd.* v. *Frankenschwerth & Chapman* [1951] 1 K.B. 631, 637; (3) *Trickers Confectioners Ltd.* v. *Barnes* [1955] 1 All E.R. 803, 807; (4) *Stone* v. *Boreham* [1959] 1 Q.B. 1, 9; (5) *R.* v. *Patents Appeal Tribunal Ex parte Swift & Co.* [1962] 1 All E.R. 610, 618 and (6) *Vellasamy* v. *R.* [1941] M.L.J. 233 at p. 234. We may also add that in the same context the Court of Appeal of the Federation of Malaya followed the Indian decisions and in a somewhat different context the Privy Council has made a pronouncement in favour of such a practice. The following additional cases may also be considered: (1) *Trimble* v. *Hill* (1879), 5 App. Cas. 342; (2) *Public Prosecutor* v. *Fernandez* [1954] M.L.J. 5; (3) *I.T.C. for City of London* v. *Gibbs* [1942] A.C. 402 at p. 414 and (4) *R.* v. *Belfast JJ.* [1947] N.I. 191.

Reference may also be made to the recent case of *Asharfi* v. *The State* A.I.R. 1961 All. 153 in which the High Court of Allahabad made an exhaustive and illuminating analysis of the theory of identification evidence, the manner in which identification parades are held and their legal effect and the precautions that have to be taken in conducting such parades.

The views expressed by the Court of Criminal Appeal of Singapore in *R.* v. *Shum Soo* (3) are not of much assistance as the Court in that case stated that it was not clear from the record of the case whether or not the statement complained of was made in the course of police investigations. Under the circumstances and in the light of the dicta in this case, it would appear that the present practice in Singapore of admitting evidence of what occurs at a police identification parade must continue in the Courts in Singapore.]

Cases referred to:—

(1) *Meelamchan & Anor.* v. *Public Prosecutor* [1962] M.L.J. 213.

(2) *Ramkishan* v. *Bombay State* A.I.R. 1955 S.C. 104.

(3) *R.* v. *Shum Soo* [1949] M.L.J. 142.

The following cases were also cited on the issue of identification evidence: *Lee Lian* v. *Public Prosecutor* [1956] M.L.J. 191 and *Nagalingam* v. *Public Prosecutor* [1957] M.L.J. 196.

COURT OF CRIMINAL APPEAL.

David Marshall for the appellant.

A. W. Ghows (Ag. Solicitor General) for the respondent.

Rose C.J.: The appellant was convicted of armed robbery contra sections 392 and 397 of the Penal Code.

The prosecution case, shortly, was that the complainant, a woman called Nancy Wee, was asleep in her house when her bedroom was entered by three persons who wore masks, amongst whom was the appellant, who stood near her bed and threatened her with a dagger.

Shortly thereafter, apparently on information received, a police party approached the house. The appellant and his companions, no doubt hearing suspicious noises, fled from the scene. The appellant's companions made good their escape, but he himself, possibly owing to a defective leg which had been injured some years previously, was apprehended after a chase.

Although the appellant and his companions were masked, the learned trial Judge came to the conclusion that the witness, Nancy Wee had ample opportunity for recognising the appellant from his general configuration by reason of the fact that he stood by her bed for as long as ten minutes and that the light of a table lamp shone upon him.

The principal point taken on appeal was that evidence of what occurred at an identification parade was wrongly admitted.

On page 23 of the record appear the following questions and answers:—

"His Lordship: He was No. 1 in the line, and you saw him and you turned down the line, and then, I take it, you went back and pointed him out?

A. Yes.

Q. That is correct?

A. Yes."

It is suggested that the evidence of the witness that she pointed out the appellant was inadmissible.

Learned counsel relies on the Federation case of *Meelamchan & Anor.* v. *Public Prosecutor* [1] which approved the judgment of the Supreme Court of India in the case of *Ramkishan* v. *Bombay State* [2], which held that a physical gesture of identification is indistinguishable, for the purposes of provisions analogous to section 121(1) of our Criminal Procedure Code, from statements made to or in the presence of a police officer at a parade. There is a contrary decision by the Court of Criminal Appeal of Singapore in *Rex* v. *Shum Soo* [3] in which it was said: "Evidence of a physical act seen by the witness is always admissible."

However, we do not propose, having regard to the facts, to decide this case upon that point. We would merely add that we see no reason to disagree with Mr. David Marshall's observation that, if the law is correctly stated in the Indian Supreme Court case, then the present position as to the evidence concerning what happens at an identification parade is anomalous to the point of absurdity. It surely cannot have been the intention of the legislature to exclude evidence of the fact that a witness at an identification parade signified his recognition of the person involved by a gesture such as a pointing finger; or even by standing in front of the person involved and looking towards him.

In the absence of any authoritative ruling of the Judicial Committee of the Privy Council, the present anomalous position, assuming the Indian judgment referred to to be correct, would seem to be a matter for correction by the legislature.

Be that as it may, the present case can, in our opinion, be determined upon the facts apart from the identification parade.

According to the evidence, which the learned trial Judge accepted and which there is clearly evidence on the record to support, the appellant was caught red-handed, in that there was an immediate chase for some hundreds of yards from the house in question after which he was apprehended by one Tan Kheng Seng, a police constable; while his two companions successfully made their escape.

The learned trial Judge rejected the defence of an alibi and we would merely observe that, having carefully considered the record, we are of opinion that any Judge or jury must inevitably have rejected the defence as false.

For these reasons, irrespective of the admission of evidence as to what occurred at the identification parade, the appeal is dismissed and the conviction affirmed.

No argument was addressed to us on the question of sentence, which seems to us to be appropriate. The sentence, therefore, also is affirmed.

Appeal dismissed.

Solicitors: *David Marshall.*

Re SALVAGE ENGINEERS LIMITED

[O. C. J. (Ong J.) November 9, 1962]

[K.L. — Originating Summons No. 200 of 1962]

Company Law — General meeting — Quorum required of two persons present in person or by proxy — Meeting of one person alone with proxy for another — Invalid meeting.

Practice and procedure — Costs — Company winding-up — Abortive.

The articles of S.E. Ltd., provided that the quorum for a general meeting shall be two persons present in person or by proxy and entitled to vote. It was also provided that a person who is not a member cannot be appointed by a proxy.

R, one of the only two members of the company, granted a proxy to the other, K authorising the latter to vote at a general meeting, *inter alia*, for a resolution to wind-up the company voluntarily. K purportedly held a meeting at which he was the only person present and he purported to pass the said and other resolutions authorised by the proxy. To cure a defect in the appointment of liquidators K made an application to Court and R applied for leave to intervene and questioned the validity of the meeting on the ground that a one-man meeting was not a properly constituted meeting under the articles.

Held: (1) the articles did not authorise a one-man meeting even though the only person present held a proxy from another member of the company;

(2) R was to pay the costs of proceedings and to indemnify and re-imburse K all costs and expenses properly incurred by the latter in the abortive winding-up.

Cases referred to:—

(1) *Sharp* v. *Dawes* (1892), 2 Q.B.D. 26.
(2) *Re Sanitary Carbon Co.* [1877] W.N. 233.
(3) *Re Prain & Sons Ltd.* [1947] S.L.T. 289; S.C. 325.
(4) *East* v. *Bennett Brothers Ltd.* [1911] 1 Ch. 163.
(5) *Re Express Engineering Works Ltd.* [1920] 1 Ch. 466.
(6) *Re Oxted Motor Co. Ltd.* [1921] 3 K.B. 32.
(7) *Parker & Cooper Ltd.* v. *Reading* [1926] Ch. 975.
(8) *Salomon* v. *Salomon & Co.* [1897] A.C. 22.

ORIGINATING SUMMONS.

J. S. H. Skrine for the applicant.

T. H. A. Potts for the intervener.

Cur. Adv. Vult.

Ong J.: Salvage Engineers Limited is a private company limited by shares formed on September 19, 1960. The total issued share capital is $210,000 of which G. A. D. Keet holds $35,000 and J. J. Raper holds $175,000 in ordinary shares of $1 each, all fully paid up. These two shareholders are both directors.

About July or August, 1962 Raper left the Federation of Malaya and Singapore for Europe for business reasons, and while in the United Kingdom he appeared to have decided not to return to Malaya. On August 24, 1962 he executed an instrument of proxy before a Notary Public in London, appointing Keet as his proxy to vote for him and on his behalf at an extraordinary general meeting of the company, to be held within 14 days thereof, to vote in favour of the following resolutions, namely, (a) to put the company into voluntary liquidation as soon as possible and